



INTERIOR BOARD OF INDIAN APPEALS

Estate of Norman Under the Baggage, Sr.

37 IBIA 124 (01/25/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ARLINGTON, VA 22203

ESTATE OF NORMAN UNDER THE : Order Affirming Decision
BAGGAGE, SR. :
: Docket No. IBIA 01-148
:
: January 25, 2002

Appellants Terrance W. Under Baggage and Marlene Under Baggage Sandy seek review of an order denying rehearing issued on May 3, 2001, by Administrative Law Judge Marcel S. Greenia in the estate of their father, Decedent Norman Under the Baggage, Sr. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Decedent died on January 19, 1997. Judge Greenia held a hearing to probate his trust or restricted estate on July 22, 1998. A document dated September 21, 1995, and purported to be Decedent's last will and testament was introduced at the hearing. Family members objected to the will on the grounds that it did not include Appellants. An unidentified man testified that Decedent had just been released from the hospital on the day the document was executed and questioned whether Decedent was capable of executing a will at that time. For purposes of this decision, the Board will assume that the unidentified man was Appellant Terrance W. Under Baggage. ^{1/}

Judge Greenia found that the document qualified as a self-proved will under 43 C.F.R. § 4.233. However, he also took testimony from one of the will witnesses.

In his May 31, 2000, order approving Decedent's will, Judge Greenia concluded that Decedent was of sound mind when he executed the document.

^{1/} The Board recently reviewed a probate hearing transcript in which most of the testimony was ascribed to unidentified individuals. See Estate of Mary Gosaduk Johnson Tilden, 37 IBIA 97 (2002). Most of the witnesses here were identified, with a few exceptions. The Board assumes the unidentified man objecting to Decedent's will was Appellant Under Baggage in order to give Appellants the benefit of every doubt.

The Judges are reminded, however, that it is their responsibility to ensure that witnesses at probate hearings are properly identified.

Appellants petitioned for rehearing, contending that they were included in an earlier will executed by Decedent, that they were Decedent's natural children, and that Decedent would not have omitted them from his will. On May 3, 2001, Judge Greenia denying rehearing, finding that the issue of disinheritance had been discussed at the hearing and that Appellants had not presented any new evidence to substantiate their claims.

Appellants then appealed to the Board. Although represented on appeal, Appellants did not file any briefs or other statements in support of their position. Accordingly, their arguments are those found in their notice of appeal. The notice of appeal states in relevant part:

That our reason for contesting the Order of May 3, 2001 is as follows:
That on the 19th day of September, 1995, [Decedent] was admitted to the Pine Ridge Hospital and was in the hospital until the 21st day of September, 1995 and was under medication. After the release of [Decedent] on the 21st of September, 1995, Malana Short Horn took [Decedent] to the [Bureau of Indian Affairs] Realty [Office] in Pine Ridge, SD, and had [Decedent] make out a will without informing the Realty Office that [Decedent] was just released from the hospital and is under medication.

We question the WILL executed on 9/21/95 that [Decedent] was under medication and a will should not have been allowed to be executed on the date of 9/21/95.

As the persons contesting the Judge's denial of rehearing, Appellants bear the burden of proving error in that decision. See, e.g., Estate of Marlon Murray George, 36 IBIA 184, recon. denied, 36 IBIA 210 (2001). On appeal, Appellants repeat arguments that were raised at the hearing. They have neither presented any new evidence in support of their position--such as the identification of any medication which allegedly altered Decedent's mental abilities--nor made any argument as to why the determination that Decedent was capable of executing a will was in error. Under these circumstances, Appellants have failed to carry their burden of proving error in Judge Greenia's denial of rehearing.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Judge Greenia's May 3, 2001, order denying rehearing is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge